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**IN THE
COURT OF APPEALS OF INDIANA**

JUAN M. CASTRO, SR.,)	
)	
Appellant-Defendant/Cross-Appellee,)	
)	
vs.)	No. 46A03-0705-CR-226
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff/Cross-Appellant.)	

APPEAL FROM THE LAPORTE CIRCUIT COURT
The Honorable Robert W. Gilmore, Jr., Judge
Cause No. 46C01-0405-FB-183

October 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Juan M. Castro, Sr., has filed a belated appeal challenging his eighteen-year sentence for class B felony aggravated battery. We affirm.

Issue

The issue is whether the trial court erred in sentencing Castro to eighteen years for aggravated battery.

Facts and Procedural History

On the evening of April 30, 2004, Castro went to visit his children at the LaPorte home of his estranged wife. While there, he encountered his wife's boyfriend, Raymond Wawrzynski, and some of Wawrzynski's friends. An argument ensued in an adjacent parking lot, and Castro got into his Chevrolet Blazer. As he drove down the street, he and Wawrzynski exchanged several remarks. Castro put his vehicle in reverse, turned, drove over the curb, and struck Wawrzynski as he stood in the parking lot. He continued forward, dragging Wawrzynski, and crashed first into a privacy fence and then into the side of a neighboring home. When the vehicle stopped, Wawrzynski lay underneath it with his leg trapped under a tire and his head bleeding. Castro attempted to back up, and the tires spun on Wawrzynski's leg. When witnesses attempted to stop Castro, he jumped from the vehicle and swung a piece of lumber at them. He ran from the scene but was apprehended shortly thereafter. Witnesses captured the events on videotape. Wawrzynski suffered serious personal injuries, including fractures of the femur and skull.

On May 4, 2004, the State charged Castro with class B felony aggravated battery. He filed a notice of insanity defense and requested a competency evaluation. On July 21, 2006, after numerous motions and continuances as well as 130 days in Logansport State Hospital, Castro was declared competent to stand trial. On September 8, 2006, the State moved to amend the charging information to include a habitual offender count. At an October 13, 2006, hearing on the motion, Castro agreed to plead guilty to class B felony aggravated battery, and the habitual offender allegation was dismissed. Sentencing was left open to the trial court. On December 22, 2006, the trial court sentenced Castro to eighteen years' imprisonment. On March 23, 2007, without holding a hearing, the trial court granted Castro's petition requesting leave to file a belated appeal.

Discussion and Decision

Castro challenges his sentence through a belated appeal pursuant to Indiana Post-Conviction Rule 2(1). In the interest of judicial economy, we will not address the State's cross-appeal challenging the propriety of Castro's belated appeal, where no hearing was held and Castro's petition was not included in the record before us on appeal.

Castro challenges the appropriateness of his eighteen-year sentence for class B felony aggravated battery. At the time Castro committed his crime,¹ Indiana Code Section 35-50-2-5 provided that "a person who commits a Class B felony shall be imprisoned for a fixed term of ten (10) years, with not more than ten (10) years added for aggravating circumstances or not more than four (4) years subtracted for mitigating circumstances." Castro asks that we

revise his sentence pursuant to Indiana Appellate Rule 7(B), which states, “The Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.”

Although Castro frames the argument in terms of Appellate Rule 7(B), the essence of his argument is that the trial court improperly weighed and balanced the mitigating and aggravating circumstances. The sentencing order identified the following as mitigating circumstances: (1) that Wawrzynski might have played a role in provoking the incident, (2) that Castro had some mental issues, none of which rose to the level of a defense, and (3) that Castro’s guilty plea spared everyone the process of enduring a trial. The trial court identified as an aggravating circumstance Castro’s criminal history, which at a minimum includes convictions for bank robbery and escape. The trial court found that the aggravator outweighed the mitigators.

In claiming that his sentence is too lengthy, Castro specifically relies on the fact that the court listed three mitigators and only one aggravator. Sentencing decisions rest within the sound discretion of the trial court, and we review such decisions only for an abuse of discretion. *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002). To constitute an abuse of discretion, the decision must be “clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006) (citation and quotation

¹ Effective April 25, 2005, the Indiana General Assembly amended our state sentencing statutes. Because Castro’s crime was committed on April 30, 2004, we apply the sentencing scheme as it existed prior

marks omitted). A trial court need not weigh aggravating and mitigating circumstances according to the defendant's scales. *Smallwood*, 773 N.E.2d at 263. A single aggravating factor of the defendant's criminal history may be sufficient to support the imposition of an enhanced sentence. *Guillen v. State*, 829 N.E.2d 142, 149 (Ind. Ct. App. 2005), *trans. denied*.²

Here, the single aggravating factor was Castro's criminal history, which includes convictions for bank robbery and escape. Castro argues that the twenty-four-year-old robbery conviction was too remote in time to merit the weight assigned to it. However, he was an adult when he committed the robbery, and his crime of escape was committed just three years before the instant offense. We also note that Castro's guilty plea was accompanied by the State's agreement to dismiss its habitual offender count. We therefore find no abuse of discretion in the trial court's weighing and balancing of aggravators and mitigators.

We now address our review and revise power as stated in Appellate Rule 7(B). On appeal, Castro has the burden of demonstrating that his sentence has "met the inappropriateness standard of review." *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). In addressing the nature of Castro's offense, we note that, instead of driving away from an argument, Castro turned his SUV around, jumped a curb, and ran over Wawrzynski

to the amendments. See *Anglemyer v. State*, 868 N.E.2d 482, 494 n.9 (Ind. 2007).

² In *Anglemyer*, 868 N.E.2d 482, our supreme court interpreted Indiana's new sentencing statutes, which came as a response to the U.S. Supreme Court's decision in *Blakely v. Washington*, 542 U.S. 296 (2004). While Castro's crime was committed prior to the change, we note that our supreme court has since stated that the relative weight assigned to aggravating and mitigating circumstances is not subject to review for abuse of discretion. *Anglemyer*, 868 N.E.2d at 491.

in a parking lot. Though Wawrzynski was trapped underneath the vehicle, Castro continued to drive, causing him further injury. Castro then became violent with witnesses, fled the scene, and had to be apprehended. The brutal nature of this crime also reflects poorly on Castro's character. As such, we do not find Castro's sentence inappropriate.

Affirmed.

DARDEN, J., and MAY, J., concur.